

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SMILEDIRECTCLUB, LLC,

Plaintiff,

- against -

JACQUELINE I. FULOP, D.M.D., P.C. and
JACQUELINE I. FULOP,

Defendants.

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

O R D E R


19 Civ. 9582 (NRB)

Plaintiff is granted leave to amend its complaint to add allegations regarding Count IV, after which defendants may move to dismiss that claim. Regarding Count IX, if discovery on another claim yields a claim for tortious interference with prospective economic advantage, then plaintiff may, as always, seek the Court's leave to add a cause of action for it to the complaint. Fed. R. Civ. P. 15(a)(2). However, plaintiff appears to propose to voluntarily dismiss Count IX while reserving the right to take discovery in search of it. This is not permissible. Bearing this in mind, plaintiff shall decide whether to voluntarily dismiss Count IX. If plaintiff decides not to do so, then the Court grants it leave to amend its complaint, if it can do so consistent with Rule 11, to assert allegations to cure the alleged deficiencies in Count IX, after which defendants may also move to dismiss Count IX. In any event, if defendants move to dismiss Count(s) IV (and

IX), the parties shall confer on a briefing schedule agreeable to both sides, in which no more than sixty (60) days elapse from the filing of defendants' motion to the filing of their reply.

SO ORDERED.

Dated: New York, New York
December 9, 2019


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE